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IN THE

Supreme Court of the United States

JENNIFER GRUTTER,
Petitioner,

vs.

LEE BOLLINGER, et al.
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* UCLA SCHOOL OF LAW STUDENTS OF COLOR IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE* [1]

Pursuant to Supreme Court Rule 37, UCLA School of Law Students of Color respectfully submit this brief as *amici curiae* in support of Respondents. All parties consented to the filing of this brief.

UCLA School of Law Students of Color is a coalition of law students and alumni of the University of California public school system (the "UC system"). The coalition has also solicited testimonials from students at Boalt Hall, Hastings College of the Law, and UC Davis School of Law. (See attached Declaration of Erika Woods.) The UC system is one of the nation's largest public university systems. These students are in a unique position to comment on this case because they have been directly affected by the prohibition against affirmative action in the UC system. As law students at the most selective public law schools in California, they can personally attest to the severe negative consequences caused by the ban on race-conscious admissions. The academic and emotional growth of many of these students has been severely impaired as a result of the ban. They have suffered direct and substantial injury from the inability of the UC system to create a safe and healthy learning environment for students of color.

A central focus of the group is to provide an institutional voice for students who otherwise would not have their voices heard in the nation's ongoing discussion of affirmative action. They are also unique in that many in its membership represent the first

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[1] No counsel for any party authored this brief in whole or in part and no person or entity other than amici, their members and their counsel have made monetary contributions to the preparation or submission of this brief.

generation of law students in the UC system to be completely educated under a so-called "color-blind" regime.

Because of their personal experiences with the lack of racial diversity in higher education and their institutional relationship as enrolled law students in the UC system, the *amici* has a direct stake in the outcome of this case. However, the *amici* does not, in this brief or otherwise, represent the official views of the UC system.

SUMMARY OF ARGUMENT

The loss of diversity is but one of the negative effects caused by the loss of affirmative action. Also relevant is the direct personal harm students of color and others attending UC schools have suffered in the wake of Proposition 209.[2] This injury is concomitant with the deterioration of a safe and comfortable educational environment for all students. This *amici* demonstrates that rather than benefitting from successfully obtaining admission in the absence of affirmative action, these students have been forced to endure a high level of racial stigmatization and isolation that has significantly impaired their ability to effectively pursue their full academic potential. Students in the UC system attest that they have suffered direct and substantial personal harm from the prohibition against affirmative action in California. (See Testimonials, *infra*.) They can also describe the destructive effects that the loss of diversity

[2] Proposition 209 was passed in California in 1996. The initiative effectively banned the use of affirmative action policies in education and employment. *See* Cal. Const. art. I, §31(a).

has created in the classroom environment at UC law schools.

Public schools have a special mission, not required at private institutions, to ensure that they are enrolling a racially diverse cross-section of the public which they serve. It is this diversity/integrationalist duty to provide an equal education to all communities that, along with diversity, is one of the compelling justifications for affirmative action programs such as the one used by the University of Michigan. While UCLA School of Law Students of Color agrees with the contention that diversity, in and of itself, should serve as a compelling governmental interest, it is also clear that there are numerous other constitutional justifications for these programs. The *amici*'s unique and revealing experiences as students in the UC system illustrate that many other rationales serve as compelling state interests for designing and implementing affirmative action programs. As early as 1896 in his famous dissent in *Plessy*, Justice Harlan observed that education was a key element in the maintenance of white dominance in American society. *Plessy v. Ferguson*, 163 U.S. 537, 558 (1896).

Given the fundamental role that school segregation has played in preventing people of color from fully integrating into American society, preventing the resegregation of colleges and universities is a compelling state interest. This Court has already recognized in its school desegregation cases that state neutrality is an ineffective remedy to segregation. *Green v. County Board of New County*, 391 U.S. 430 (1968). Similarly, state neutrality is ineffective in preventing the resegregation of America's elite colleges and universities.

The desegregation goal of *Brown* has not yet been realized. It is the obligation of the Court to ensure that

the goal of equal educational opportunity originally articulated in *Brown* is met. This goal will never be achieved unless all students of color have equal access to the elite public schools in our country.

ARGUMENT

I. PREVENTING RESEGREGATION IN HIGHER EDUCATION IS A COMPELLING STATE INTEREST.

A. This Court Has Recognized The Harms Caused By Segregation in Higher Education.

Prior to this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954)(holding that the "separate but equal" doctrine in secondary education is unconstitutional), this Court recognized the harmful effects of segregation in higher education. In *McLaurin v. Oklahoma State Regents for High Education*, 339 U.S. 637, 641 (1950), this Court found that the University of Oklahoma's segregation policy impaired the ability of a Black student to "engage in discussions and exchange views with other students, and in general, to learn his profession." In *Sweatt v. Painter*, 339 U.S. 629, 634 (1950), this Court also struck down the University of Texas law school's segregation policy as unconstitutional, reasoning that "the law school, the proving ground for legal learning, cannot be effective in isolation from the individuals and institutions with which the law interacts." More recently, in *United States v. Fordice*, 505 U.S. 717, 727-728 (1992), this Court held that states have an affirmative duty to take steps to desegregate their dual school systems if existing racial imbalances in the systems are attributable to the state. While the Court noted the differences between secondary and

post-secondary schools, the Court ultimately found that the state of Mississippi's *adoption of race neutral policies alone was insufficient to meet its affirmative duty to desegregate its colleges and universities*. Although the Court in *Fordice* dealt with a university system that was formerly segregated by law, the *amici* urge this Court to recognize that "the harm inflicted upon minority students [by segregation] does not turn on whether the segregation is of de facto or *de jure* character; it is the presence of racial isolation, not its legal underpinnings that creates unequal education." *Crawford v. Board of Education*, 17 Cal. 3d. 280, 295 (Cal. 1976). Moreover, the harm being imposed here is not *de facto* because it is the result of specific and explicit policies enacted by state entities which have resulted in direct injury to students.

B. The Protections That This Court Has Recognized As Critical For Students of Color In The Desegregation Context Should Apply to Colleges and Universities in Order to Prevent Resegregation in Higher Education.

1. Resegregated universities inflict upon students of color the same injuries and stigmatization that this Court found unconstitutional in Brown and its progeny.

Students of color who attend resegregated schools are burdened by extreme academic pressures. They face academic and social stigmatization, as well as racial isolation. The stigmatization, racial isolation, and academic pressures that students of color at resegregated

schools must endure are emblematic of the concerns expressed by this Court in its desegregation cases. While the Court in *McLaurin* noted that the University of Oklahoma's segregation policy prohibited a Black student from engaging in discussions and exchanging views with other students, the same holds true for students who attend resegregated colleges and universities. Many students of color feel that they are silenced during most class discussions, but are expected to speak whenever race is mentioned in class. For example, Chrystal James, one of *only two* Black first-year students in the class of 2002 at the UCLA School of Law, says:

> [I]n [Torts] and [in] other classes, I started to see a pattern starting to happen in the classroom with the professors . . . in my Torts class, I was the only Black in that class . . . [and] I was the only student in that semester who never got called on to give a full case reading . . .I was the only student in that section of maybe about thirty-five people, a small enough section that it was obvious that . . . I'd never been called on.

Jodie-Marie Masley, *Testimony of Chrystal Blossom James*, 12 La Raza L.J., 433, 435 (2001).

Although Ms. James was silenced during her Torts class, she had a very different experience during her Constitutional Law class:

> I remember being upset almost every single day . . . I remember students feeling free enough that when anything was mentioned about color, to turn in their seat and stare at me . . . I had students sit there and turn to me , and stare at me, to wait for my reaction . . . I remember Lena [the other Black student] getting up and leaving the classroom, running out crying.

Id.

Erin Pitts, a second-year student at Boalt Hall, echoes Ms. James' sentiments:

> I felt burdened by a responsibility to express the frequently neglected concerns of race and racism that pervade subject matter such as property and criminal law. I felt ill-equipped to address such emotionally-charged issues in a classroom setting where my peers seemed oblivious to such concerns and satiated by cursory discussions of culture and race.

See infra Section III, *Testimonial of Erin K. Pitts.*

In addition to the academic pressures, students of color who attend resegregated schools also suffer from negative social stigmas. For example, Marky Keaton, one of only five Black students in the class of 2003 (a class of over 300 students) at the UCLA School of Law, was unfairly singled out by the University of California Police Department and questioned regarding a string of thefts that were occurring in the law school library. Mr. Keaton felt that the police questioned him because he was one the few Black males in the law school.

> One day I was approached in the law school courtyard by a couple of UCLA campus police officers. One of the officers insisted repeatedly that I specifically had been identified by a student as being in the vicinity when some money was allegedly stolen from her two days earlier. Of course, when I asked the officer if the girl had said my name, he said no. Instead, she had merely described a Black male with white shoes and a long sleeve shirt. Apparently, since I'm one of the only Black males walking around this school, this was enough for the officer to say affirmatively that I was the male she had identified. It was around lunchtime so there

were a lot of students in the courtyard who witnessed the incident. I was absolutely humiliated. I had been trying hard to fit in with the rest of my classmates and to get them to see me as more than just "the Black man in the class." Because I was the only Black man in the class, I felt that the police singled me out. I also felt like the other students were looking at me as if I was guilty. I was so emotionally distraught that I was not even able to go to class that day. It will be a long time before I am ever comfortable in the law school environment again.

See infra Section III, *Testimonial of Marky Keaton*.

Tiffany Thomas, a first-year law student at Boalt, has also felt the social stigma attached to being one of a handful of Black students at a resegregated school.

> As an African American 1L at Boalt, I feel that the normal pressures placed on first-year students are heightened by my awareness of my unique position. I am one of thirteen Black students, and am often the only Black student that my non-Black peers come into contact with on a daily basis. In their attempts to "identify" with me, I am often subjected to the high fives, "what's ups," and "girlfriend" comments that sum up the whole of who I am to my non-Black classmates.

See infra Section III, *Testimonial of Tiffany Renee Thomas*.

Not only do students of color at resegregated schools suffer from social stigmas, they are also stigmatized as academically inferior:

> During my first year of law school I had the great fortune of doing well. However, I felt isolated because white students made so much about my ability to compete with them on equal footing . . . after I secured a job at a large law firm in Los

> Angeles, something that the majority of white students in my section could not do . . . I incurred their wrath. Instead of appreciating the fact that a student of color could compete with them, they made it a point to stress how "exceptional" my abilities were.

See infra Section III, *Testimonial of Anthony Solana, Jr.*

Lastly, students of color at resegregated schools face extreme racial isolation:

> I entered Boalt Hall in the year 2000 as one of seven Black students. However, I was the only Black male . . . While there were other people within my class who shared my race, there was not one person who could assist me in providing my peers first hand insight into the Black male's perspective. This problem was compounded by the fact that I was the only Black student in all of my first-year classes. Thus, I was forced into the dual obligation of representing the perspective of the entire race within my classes while attempting to represent my own unique identity within the first-year class.

See infra Section III, *Testimonial of Jamarr M. Boyd.*

The injuries suffered by students of color at resegregated schools are definite and real. They are the exact types of injuries that this Court sought to eliminate with its decisions in *Brown* and its progeny. Upholding the use of race-conscious admissions policies is critical to ensuring that the promise of *Brown* is kept.

2. State neutrality has been ineffective in preventing resegregation in higher education.

In *Green v. County Board of New County*, 391 U.S. 430 (1968), this Court found unconstitutional a "freedom of choice" plan that allowed children in a formerly segregated school district to choose the school they wished to attend. In doing so, the Court looked at the actual *effects* of the plan and reasoned that the neutral stance taken by school officials was an ineffective remedy to segregation. *Id.* at 433. (Finding that during the three years that the plan had been in operation, eighty-five percent of the Black children remained at the predominately Black school while not a single white child chose to attend the Black school).

Just as the Court in *Green* found that state neutrality was an ineffective means to remedy segregation, this Court should also find that state neutrality is ineffective in preventing the resegregation of higher education. In the absence of race-conscious admissions programs, some of America's most prestigious universities have essentially become resegregated. For example, in 1965, when UCLA essentially excluded Blacks as a result of de facto segregation policies, the UCLA School of Law had only one Black student in its first-year class.[3] In 1999, after the imposition of Proposition 209, the UCLA School of Law had only two Black students in its first-year class. *See* Jerome Karabel, *Affirmative Action had Real Merit*, L.A. TIMES, July 10, 2000, at B7. During this same time period, the number of Native Americans and

[3] *See* Ernest Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L. J. 1069, 1080 (1968).

Latinos also declined significantly. In 1999, the UCLA School of Law had only one Native American and eighteen Latinos in the first-year class.[4] In contrast, in 1994, when the UCLA School of Law had an affirmative action policy, the first-year class contained five Native Americans, forty-six Blacks, and fifty-seven Latinos. *Id.*

The restrictions placed upon admissions officers at UCLA and other selective universities have clearly resulted in a return to the days of segregation, when Blacks and other people of color were excluded from schools like UCLA. *Supra,* fn 3., at 1077. The *amici* urge this Court to engage in a substantive equal protection analysis, similar to the analysis used in *Green,* by examining the actual *effects* of race-neutral admissions policies in order to see the true discrimination perpetuated by such policies.

3. Admissions officers need broad discretion to use race-conscious admissions policies in order to account for racial biases in standardized tests.

In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), this Court upheld the use of racial quotas as a means to achieving desegregation. The Court reasoned that "[S]tate and school authorities are traditionally charged with *broad power to formulate and implement educational policy*[,] and [the use of racial quotas] as an educational policy is within the broad

[4] *See* Data Mgmt. Analysis Unit, Univ. Cal. Office of the President, Law Sch. Applications, Admissions, and First Year Class Enrollments (Fall 1994 - Fall 2002), available at "http://www.ucop.edu/acadadv/datamgmt/lawdata/lawschl-new.html."

discretionary power of school authorities." *Id.* at 16. (emphasis added). In order for selective institutions such as UCLA and Boalt Hall to maintain integrated students bodies, admissions officers must be given the same wide latitude given to school authorities in *Swann*. This is because selective universities rely heavily on standardized tests such as the Law School Admissions Test ("LSAT") as an allegedly racially neutral means to determine which applicants are the most qualified.[5] However, these tests are not racially neutral in that they tend to favor white upper class individuals while devaluing the talents of underrepresented groups.[6]

As a result of the heavy reliance on the racially biased tests, many talented students of color who are capable of excelling at a selective law school like UCLA are denied admission based on their LSAT score. Mr. Solana underscores the validity of this point:

> I am the first person in my family to enjoy the privileges of a college education, let alone a law degree. Affirmative action has allowed me the opportunity to do something that I knew I always could, achieve personally and academically. As of today I am proud to say that I graduated with honors from UC Berkeley, maintain a strong GPA at UCLA School of Law and am also working on my Masters in Urban Planning at UCLA's

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[5] *See* Michael A. Olivas, *Higher Education Admissions and the Search for One Important Thing*, 21 U. ARK. LITTLE ROCK L.J. 993, 1003 n. 32 (1999).

[6] *See* William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 CAL. L. REV. 1055 (2001).

> Department of Urban Planning. Furthermore, I will be working for a top 20 law firm in San Francisco after graduation. This is despite the fact that I received a 153 LSAT score. However . . . I [am] the last of a dying breed. Students with high GPA's but with low standardized test scores [are] now being relegated to the bottom rungs of California's educational system.

See infra Section III, *Testimonial of Anthony Solana, Jr.*

This Court has also recognized the inability of standardized tests such as the LSAT to fairly assess the academic capabilities of students of color. In *Defunis v. Odegaard*, 416 U.S. 312, 335, 340 (1974) (Douglass, J., dissenting), Justice Douglass stated that "the presence of a standardized test such as the LSAT, is sufficient warrant for a school to put racial minorities into a separate class in order better to probe their capacities and potentials . . . the key is consider[ing] applications in a racially neutral way. Abolition of the LSAT would be a good start." *See also Regents of the University of California v. Bakke*, 438 U.S. 265, 306 n.43 (1978) ("[T]o the extent that race and ethnic background were considered only to the extent of *curing established inaccuracies in predicting academic performance*, it might be argued that there is no 'preference' at all") (emphasis added). Because most selective universities rely heavily upon standardized tests in evaluating applicants, admissions officers must be allowed to take into account an applicant's race, or they cannot account for the biases inherent in standardized tests.

II. DIVERSITY IN HIGHER EDUCATION IS A COMPELLING STATE INTEREST.

A. Factoring Diversity In Higher Education Admissions Is a Remedial Program.

Discrimination is prevalent in our society, otherwise diversity would have occurred naturally.[7] Most of the country's elite educational institutions have already recognized this problem and addressed it. They should be allowed to continue to do so because the present lack of diversity is a direct result of America's history of racial and gender discrimination.[8]

Diversity cannot be completely separated from integration. The fact that Black and Latino students are marginalized and presumed to be inadequate is a function of the intrinsic racism prevalent in our society. *Id.* Affirmative action is simply a mechanism to mitigate the psychological injuries caused to students by these racial stereotypes. Integration is designed as a partial remedy for the stifling effects of this racism. As students of color in the UC system can attest, the assumption of inferiority exists regardless of the existence or nonexistence of an affirmative action program. By matriculating a critical mass of minority students, schools can create an educational environment in which students can achieve

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[7] Charles Lawrence, *The Id, The Ego, and Equal Protection: Reckoning With Unconscious Racism*, CRITICAL RACE THEORY, 236-257 (Kimberlé Crenshaw et al. eds., 1995).

[8] William C. Kidder, *Portia Denied: Unmasking Gender Bias On The LSAT and Its Relationship To Racial Diversity In Legal Education*, 12 YALE J. L. & FEMINISM 1, 8-9, 20-21 (2000).

their full potential because they no longer suffer under assumed inferiority.

Student experiences illustrate how racial tension escalates in the absence of a diverse class. Margaret Richardson, a third-year student at Boalt Hall is representative of typical experiences of even those who are not students of color. She recalls a professor dismissing a comment about the so-called "3/5ths Compromise" saying "this is a class about the constitution, not about race."
See infra Section III, *Testimonial of Margaret Richardson.*

Even though resegregated schools may achieve minuscule gains in diversity through elaborate and expensive outreach programs, the classroom environment still deteriorates because resegregated schools will never be able to achieve the critical mass necessary for a safe and healthy educational setting. Students of color at resegregated schools face severe emotional harm from this lack of diversity in the classroom. A burden is imposed upon them to represent and perform their "racial identity" regardless of their personal beliefs.

By allowing schools to become resegregated, the Court would place administrators in an untenable position. For example, despite the fact that opponents of affirmative action cite to UCLA's increase in Black students over the past four years, in reality, the growth has only been from two first-year Black students in 1999 (albeit 0.66%) to thirteen first-year Black students in 2003 (albeit 4.3%) (compared to 1994 when there were 46 Black students, or 15.3% under affirmative action). This increase is paltry when you consider that UCLA typically has an incoming class of over 300 students and there is no way to increase the numbers beyond this without expensive and extensive outreach efforts. Moreover, the recent budget crisis in California has

resulted in severe monetary cuts to outreach programs. Because of this, it is most probable that these numbers will only go down in the future. Over the past five years, the recent numbers yield an average of only six Black first-year students split over eight sections. This means that the administration of a similarly resegregated school would be forced to choose from several harmful options. They could randomly assign the Black students to eight different sections which could result in no Black students in certain sections and place an incredible racial burden on the one or two Black students in the remaining sections. Alternatively, they could divide Black students equally between a few sections which might lessen the burden on Black students but would create a loss of diversity in all of the other sections. Finally, they could place all of the Black students in one section, achieving a critical mass in one class, but at the expense of all the other sections. Black students would probably feel comfortable and certainly safer in this scenario, but there would be an incredible loss of diversity for the rest of the law school. *In the absence of affirmative action, there is no solution to this dilemma.*

Like most groups of color, Native American students were still grossly underrepresented even when strong affirmative action programs existed in California. Angela Mooney-D'Arcy's experience as a joint-degree student at UCLA symbolizes the plight of all students in such an academically barren environment:

> The only support network I find is from the few students of color in the first-year class. We share battle stories from the classroom and console one another in our anger and pain at the silence that is imposed on us by virtue of the fact that our numbers are not significant enough to render our issues "important" in the classroom. Sometimes we joke, isn't it a good thing that we don't all have a "bad" day at the same time? Unfortunately, most days at this post-209 law school will continue to be "bad" days for students of color unless action is taken to counter the current system of white privilege that is presently the hallmark of admissions policies at elite law schools.

See infra Section III, *Testimonial of Angela Mooney-D'Arcy.*

It is true that *Adarand Constructors, Inc. v. Pena*, 515 U.S 200, 235 (1995) represents the proposition that racial classifications are suspect and generally must be supported by a compelling state interest. However, this Court has also held that the state has a compelling interest in remedying the present effects of past discrimination. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989). No case has held that this is the only compelling interest that exists. Instead, it is our contention that the analysis should be highly fact specific because the Court has an obligation to distinguish between programs that serve the invidious purposes of discrimination and those that are clearly designed to ameliorate the damage caused by it. There is no compelling state interest in discrimination, but the government is permitted to act to reverse the harm caused by previous destructive discriminatory acts. *Id.* This argument supports the rule reached by the lower court that diversity is a compelling governmental interest. *Gratz v. Bollinger*, 122 F.Supp. 2d 811, 822 (E.D. Mich. 2000).

In *Brown*, this Court observed that "education is perhaps the most important function of state and local

governments." *Brown*, 347 U.S. at 493. Historically, limiting access to education was a tool designed to maintain white supremacy.[9] Justice Powell acknowledged in *Bakke* that universities should have the freedom to select a diverse student body. *Regents of the University of California v. Bakke*, 438 U.S. 265, 312 (1978). As Justice Powell commented, diversity is essential to adequately preparing the graduates of the nation's finest universities for leadership in our increasingly global society. *Id.* at 313. It is not enough that people are cognizant that different cultures and experiences exist. Instead, as future leaders, graduates of schools like UCLA and Boalt must be able to take discrimination against such groups into account if they are to make effective decisions. Because they are public schools, this mission of ensuring equal representation and expression in academic and social discourse must be their first priority.

B. *Bakke* Establishes The Notion That Diversity Is A Compelling State Interest.

This Court has held that "when a fragmented Court decides a case and no single rationale explaining the results enjoys the assent of five justices the holding of the court may be viewed as that position taken by those members who concur in the judgment on the narrowest grounds." *Marks v. U.S.*, 430 U.S. 188, 193 (1977). Justice Powell's opinion holding that diversity is a compelling state interest represents the narrowest grounds for the decision in *Bakke*. The opinion by

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[9] Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 10 LA RAZA L. J. 363, 389-395 (1998).

Justices Brennan, White, Marshall and Blackmun in *Bakke* took an even broader approach to using race as a factor in admissions. *Id.* at 324. This opinion did not mention diversity as a compelling interest. *Id.* The dissent articulated a test that race- conscious programs are constitutional "if the purpose . . . is to remove the disparate racial impact its actions might otherwise have if there is reason to believe that the disparate impact is itself the product of [societal] discrimination." *Id.* at 369.

Under this test, a program whose goal is to achieve a diverse student body would defeat a constitutional challenge because the lack of diversity in universities is clearly the result of societal discrimination stemming from slavery, segregation and the history of racial inequalities in education. The purpose of diversity is to remove the disparate impact Justice Powell recognized in an "academic vacuum"or homogeneous educational environment. *Id.* at 314. Graduates educated in these types of environments are ill-prepared to adequately serve and represent our multicultural nation. *Id.* Thus, although their opinion did not directly address diversity, it is sufficiently broad that it constitutes an undeniable acceptance of Justice Powell's diversity rationale.

III. TESTIMONIALS DEMONSTRATE THE IMPACT OF RESEGREGATED UNIVERSITIES

These testimonials provide a limited yet powerful glimpse into the intimately painful world of being a student of color in a resegregated law school.

Annette Almazan, Class of 2002, UCLA School of Law: As a Pilipina American who attended UCLA after Proposition 209, I can testify to its harmful effects on Asian Pacific Americans. Prior to Proposition 209, there

were usually ten to twenty Pilipino/a American students per year, but in my year, there were only four. As a former California public high school teacher, I was dismayed to see so few students of color. I remember holding the hand of one of my friends during Constitutional Law because we needed to brace ourselves for the next outrageous statement by one our classmates. It is sad that less than forty years after Asian Pacific Americans first began attending UCLA, we have to fight this fight again.

Art Corona, UC Hastings College of the Law, Class of 2003: I arrived at law school believing that social ignorance and racism was a problem of the past. I was wrong. Last year, La Raza Law Students Association co-sponsored a National Latino Conference in which prominent members of our community were to participate in academic lectures and presentations. We sought support from the administration in hosting a reception for Latino judges, attorneys, and political figures at the school's sky lounge, but were told that it was not a good idea because we knew "how those people get when they are drunk." Ultimately, we only received a small loan to hold the reception off campus.

Jamie L. Diemecke, UC Davis King Hall, Class of 2004: I never expected the repercussions of Proposition 209 to be so blatant. I am one of only eight Latino students in my class. I face the fact that there are only four African American students in a law school named after Martin Luther King, Jr. Race is essential to the study of law and is a fundamental aspect of every part of our society. Only by acknowledging the existence of disparities in education will we realize how crucial it is to make diversity in education a priority.

Rosa Figueroa-Versage, UC Hastings, Class of 2003: The worst thing about not having other Latinos in my classes is that I am expected to be the voice for "my people." Every time I manage to work up the courage to speak, whatever I say is taken to be the opinion of all Latinos in the United States. I know that I am alone and would not have any allies in my positions and statements. Therefore, I often just sit in class and swallow my thoughts.

Lena Hines, Class of 2002, UCLA School of Law: No matter which words I choose, I cannot describe the painful experience of being one of two African-Americans in the Class of 2002. I've suffered racial discrimination my entire life, but sitting in a law school class under the conditions of a post-Proposition 209 era nearly defeated me. I literally had to hold the hand of a nearby classmate to maintain my composure as I was repeatedly stunned by racist comments made by my fellow classmates. I was often rendered physically unable to participate in or to even follow classroom discussions. Prior to my experience at UCLA, I had never been rendered unable to participate in classroom discussions by views contrary to my own.

But Proposition 209 gave students a basis upon which to set forth their racist claims.

Brandon Tran, Class of 2002, UCLA School of Law:

I am a Vietnamese American who arrived in this country on a fishing boat. My family was sustained by the California welfare system for most of my childhood. My Christmas memories are of standing in line at the Salvation Army. The effects of Proposition 209 are not limited to just African American students. The entering class of 2004 at UCLA has only one Vietnamese American student. Every year prior, Vietnamese American law students would hold an informal dinner-

sometimes with over twenty law students-to share our culture and our experiences. That informal gathering has ended.

Angela Mooney-D'Arcy, UCLA School of Law Class of 2004: Because of the lack of students of color in the classroom, and consequently, the lack of diverse perspectives being put forth, the decision to raise my hand and speak out is not one easily made. I choose to speak, but only because the obligation I feel to those who fought before me (in 1968 there were only 25 Native American lawyers out of a population of roughly half-a-million) outweighs my fear of being ridiculed by my peers. What does it matter how they label me when less than a hundred years ago California Indians were being hunted down by state subsidized killers, Indian deaths celebrated in local papers? I suffer through Property class virtually alone as I wait for the professor to mention, just once, where all this "property" that we have so many laws about comes from. When I bring up the fact that the law of adverse possession that focuses on "efficient" use of the land is based on a particular Anglo conception of efficiency, the same concept of efficiency that often served as the colonial justification for forced appropriation of Indian lands, I am faced with a moment of silence and then, moving on . . . My contribution has been effectively devalued and I am silenced for the remainder of the day.

The only support network I find is from the few students of color in the first-year class. We share battle stories from the classroom and console one another in our anger and pain at the silence that is imposed on us by virtue of the fact that our numbers are not significant enough to render our issues "important" in the class-room. Some-times we joke, isn't it a good thing that we don't all have a "bad" day at the same time?

Unfortunately, most days at this post-209 law school will continue to be "bad" days for students of color unless action is taken to counter the current system of white privilege that is presently the hallmark of admissions policies at elite law schools.

Anthony Solana, UCLA School of Law Class of 2004: I had a 3.8 GPA but only got an 860 on my SAT (400 Math, 460 Verbal). I am the first person in my family to enjoy the privileges of a college education, let alone a law degree. Affirmative action has allowed me the opportunity to do something that I knew I always could, achieve personally and academically. As of today I am proud to say that I graduated with honors from UC Berkeley, maintain a strong GPA at UCLA School of Law and am also working on my Masters in Urban Planning at UCLA's Department of Urban Planning. Furthermore, I will be working for a top 20 law firm in San Francisco after graduation. This is despite the fact that I received a 153 LSAT score.

However, I must stress that I am the *exception*, not the rule. After the abolition of race conscious admis-sions policies, students like me who previously were granted an opportunity to succeed were discriminated against. In essence, I was the last of a dying breed. Students with high GPA but with low standardized test scores were now being relegated to the bottom rungs of California's educational system.

During my first year of law school I had the great fortune of doing well. However, I felt isolated because white students made so much about my ability to compete with them on equal footing. I was very outspoken about the need to racially integrate UCLA. I was always open about my LSAT score and in turn I think people expected me not to do all that well. However, after I secured a job at a large law firm in Los

Angeles, something that the majority of white students in my section could not do. In turn, I incurred their wrath. Instead of appreciating the fact that a student of color could compete with them, they made it a point to stress how "exceptional" my abilities were.

Marky Keaton, UCLA School of Law Class of 2003: One day I was approached in the law school courtyard by a couple of UCLA campus police officers. One of the officers insisted repeatedly that I specifically had been identified by a student as in the vicinity when some money was allegedly stolen from her two days earlier. Of course, when I asked the officer if the girl had said my name, he said no. Instead, she had merely described a Black male with white shoes and a long sleeve shirt. Apparently, since I'm one of the only Black males walking around this school, this was enough for the officer to say affirmatively that I was the male she had identified. His contention is all the more ridiculous because I was not even on campus the day the officer said the theft occurred. I found this patently offensive. Once the officers realized that I was a law student, they didn't even bother to ask me any questions about the alleged theft. However, from my perspective, the damage was already done. It was around lunchtime so there were a lot of students in the courtyard who witnessed the incident. I was absolutely humiliated. I had been trying hard to fit in with the rest of my classmates and to get them to see me as more than just "the Black man in the class." I was so emotionally distraught that I was not even able to go to class that day. It will be a long time before I am ever comfortable in the law school environment again.

Margaret Richardson, Boalt Hall Class of 2003: In the wake of Proposition 209, Boalt Hall has become a more segregated educational environment. The

admissions process has not accounted for the end of affirmative action in a sufficient way and the result is that most students have achieved success in traditional ways measured by traditional means. Class discussions are less vibrant and engaged because so often student voice has become increasingly homogenized. Those of us committed to using the law as a tool to achieve racial justice have found our comments dismissed by the majority of professors and classmates alike.

When discussing the historical context of the constitution, one professor dismissed a student comment about the so called "3/5ths Compromise" saying, "this is a class about the constitution, not about race." This fundamentally summarizes the approach that the administration and faculty have taken to race and ethnicity in the post affirmative action era. However, they would like to deny it, race remains a fundamental feature of law in the United States.

Erin K. Pitts, Boalt Hall Class of 2004: In my first semester, while grappling with basic legal doctrine, I felt burdened by a responsibility to express the frequently neglected concerns of race and racism that pervade subject matter such as property and criminal law. I felt ill-equipped to address such emotionally-charged issues in a classroom setting where my peers seemed oblivious to such concerns and satiated by cursory discussions of culture and race.

During spring recruitment, the African-American community worked feverishly to entice African-American admits to join our small minority community. In spite of our efforts, 2002 yielded fewer Black matriculants than the prior year. We seemed to be waging a losing battle.

Today I witness the repercussions of the dismantling of affirmative action in yet another arena. As managing editor of the *African-American Law & Policy Report*

(ALPR), a journal founded in 1992 to provide a much needed venue for Black legal scholarship, I experience a crippling effect of Proposition 209. This journal occupies a unique space within Boalt and the national legal forum. It is one of only a handful of Black law journals in the nation, and it has suffered immeasurably, arguably irreparably, due to the loss of affirmative action. Proposition 209 stripped *ALPR* of the human capital needed to carry out the tasks of soliciting, ed. ing, and publishing. Our historical struggles hamper our ability to recruit student members, who find more attractive opportunities in journals that were less affected by the action of Proposition 209. We have lost subscribers, contributors, and worst of all, faith in ourselves. And, as important, our student body and the national arena have been deprived of an important venue for discourse on African-American legal concerns.

As we prepare to publish this spring, we actively combat the legacies of Proposition 209 - self-doubt, fatigue, and disillusionment. This volume is especially meaningful because it represents a fusion of labors carried out from 1999 until 2002. We hope that *ALPR* is able to regain the prominence it once held, but recognize that like many things at this institution, the success of *ALPR* rests heavily upon the shoulders of our few overburdened, and weary African-American students.

Jamaar M. Boyd, Boalt Hall Class of 2003: I entered Boalt Hall in the year 2000 as one of seven Black students. However, I was the only Black male. Prior to entering law school, I never defined myself by my gender in conjunction with my race. As a practical matter, however, I could not deny the reality of the situation: I was the only one. While there were other people within my class who shared my race, there was

not one person who could assist me in providing my peers first hand insight into the Black male's perspective. This problem was compounded by the fact that I was the only Black student in all of my first-year classes. Thus, I was forced into the dual obligation of representing the perspective of the entire race within my classes while attempting to represent my own unique identity within the first-year class.

It is still an open question on how this impacted me. However, it is clear that my classmates were cheated because they were denied a diversity of views from Black people who occupied varying socio-economic identities. By providing a range of views and experiences, there is a higher probability that the "Black perspective" is going to be expressed within the law school. Without this, people may be forced to attempt to gather the insight and experience of an entire race from one person. As the one Black male out of two hundred and seventy students that entered Boalt Hall in 2000, I think that this is inherently unfair to the student, the student body, and the legal community as a whole.

Tiffany Renee Thomas, Boalt Hall Class of 2005: As an African American 1L at Boalt, I feel that the normal pressures placed on first-year students are heightened by my awareness of my unique position. I am one of 13 Black students, and am often the only Black student that my non-Black peers come into contact with on a daily basis. In their attempts to "identify" with me, I am often subjected to the high fives, "what's ups," and "girlfriend" comments that sum up the whole of who I am to my non-Black classmates. While others can easily brush off off-beat comments and jokes, I am often forced to internalize my feelings about them in an attempt to simply get by. While other students are free to say whatever they like, I am constantly forced to think

through and then re-think my comments before speaking to eliminate anything that can be characterized as resulting from my Blackness. This is a hard burden to bear. The only people who can identify with my struggles are my fellow Black students. However, because of our small numbers and the toll that repeated "war stories" can place on them, I often have to shoulder the burden alone.

IV. CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Sixth Circuit in *Grutter* should be affirmed.[10]

Dated: February 13, 2003.

Respectfully submitted,

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Counsel of Record

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[10] Great acknowledgment and appreciation is given to the UCLA School of Law Students, Erika Woods, Marky Keaton, Rasheda Kilpatrick, Amara Andrews, Angela Mooney-D'Arcy, who drafted this brief.

APPENDIX

DECLARATION OF ERIKA WOODS

I, Erika Woods, am a member of the UCLA School of Law Students of Color, and a third-year law student. I declare that the following is true:

1. I and several law school colleagues gathered and obtained signatures from students who are currently enrolled at UCLA School of Law, Boalt Hall, UC Davis King Hall, and UC Hastings College of the Law, who are in support of the *Amici Curiae* brief submitted in support of affirmative action and the Respondent in the case entitled *Jennifer Grutter v. Lee Bollinger, et al*. Supreme Court Case No. 02-241. The names of the students who signed in support of this brief is a sample of the many students, Black, Latino, White and others, who support affirmative action in order to have a successful balanced learning environment. They are:

University of California at Los Angeles School of Law

Amy Loeliger
Robert Petersen
Margie Estrada-Schoors
Pearl Del Rosario
Caryn Mandelbaum
Deborah Lintz
Karen Thomas
Sarah Remes
Parissh Knox
Colin Bailey
Julie Farrell
Kristina Olson
Tirza Castellanos
Silas M. Shawver
Misty Sanford
Stacey Rolland
Ezekid Webber
Laureen Laglagaron
Jobina Jones
Jeffrey Cohen
Eddie Lo
Yesenia Santacruz
Stephanie Lee
Kavita Aggarwal
Danielle Brown
Christine Tognoli

Ryan Tacorda
Erwin Benedicto
Jonathan Richter
Sergio Perez
Anne Nguyen
Christine Trinh
Giam Nguyen
Stephen Obenski
Helen Cho
Rebekah Weldon
Avital Rosenberg Chatto
Samantha Eisner
Amara Scott Andrews
Shaffy Moeel
Aurelio Torre
Aaron Beard
Stephanie Kena Lopez
Michael Chang
Pablo Escobar
Arusi Loprinzi
Bernie Howse
Pollyana Ma
Paula Goldstein
Stacy Feinberg
Jessany Garret
Jason Harris
Kourosh Moghdan
Mari Metcalf
Robin Hazel
Erika Araujo
Erica Lepping
Soleil Teubner
Melissa Poole
Ritesh Patel
Elizabeth Barros

Dilkash Khan
Landon Bailey
Stephanie Baldovi
Amanda Reed
Bonnie Carter
Phoung Nguyen
Diego Arp
Michael Wilson
Jamie Morikawa
Nancy Inesta
Garen Nazarian
Anoush Hakimi
Rebecca Meiers
Nadin Madoyan
Ahmand R. Johnson
Nisha Vyas
Rebecca Kanter
Mana Elihu
Meike Biesheuvel
Katherine Wich
Vicki Steiner
Stephen Smith
Valerie J. Grub
Abby Eskin
Jenny Carey
Kerri Strunk
Christopher Punongbayan
George Chiu
Guillermo Mayer
Laura E. Sanchez
Brendan Chan
Tina Liu
Kalyanee Mam
Michael Selyem
Lauren Walker

Khaled Beydoun
Ashton Watkins
Hanna Yoon
Luan Huynh
Alejandro Becerra
Mohammed Cato
Nisha Vyas
Pallavi Dhawan
Katherine Farkas
Conor Moore
James Godwin
Kregg Koch
Hien Nguyen
Jessica Kaplan
Joe Calvert
Pam Singh
Jason Patel
Anthony Solana, Jr.
Jennifer Y. Lai
Jennifer Ro

Steve O.J. Kwon
Wendy Sha
A. Haviva Shane
Roderick Sasis
Michelle Decasas
Erin Oshiro
Elana Konstant
Diana Tsang
Michelle Carey
Luis A. Rodriguez
Janis Felderstein
Nicholas Espiritu
Marisol Arriaga
Maricela Marroquin
Oscar Pardo
Miguel Duarte
Antonio Villegas
C. Pamela Gomez
Jesstine Guzman
Irma Hernandez
Guadalupe Palma
Quinn Tang

University of California at Berkeley (Boalt Hall)

Claudia Guevara
Guy Johnson
Nora A. Preciado
Adwait Talathi
Jaime Feder
Elizabeth Garfinkle
Araceli Martinez-Olgnin
Victoria Grand
Rachael Knight

Elizabeth Mazier
Teo Uno
Marc Troc Gonzalez
Therese Hickey
Jamaar M. Boyd
Daniel Omos
Kathy Roberts
Jennifer Vega
Marisa Arrona
Jocelyn Garmucy

Mohammed Walizdach
Sandra Gallardo
Jenny Harbine
Lothlorien Redmond
Erik Munoz
Nicole Thomas
Rishi Sharma
Deborah Abernathy
Sarah Bond
Paul More
Alegria de la Cruz
Lila Bailey
Ariel Clark
Le'a Kanehe
Javier Rivera
Victor Rodriguez
Rovianne Leigh
Shanda Hunt
Matt Watson
Mary Beth Kaufman
Erik Munoz
Yungsuhn Park
Serena Lin
Mo Kashmiri
Cesar del Peral
Jee Park
Gabriela Gallegos
Olivier Lagardo
Matthew Walding
Donna Welding
Donna Maeda
Roopa Singh
Elizabeth Dahlstrom
Erin Pitts

Charlotte Wiener
Kevin Bundy
Luz C. Valverde
Allison Davenport
Maria Weydemaller
Josl Drescher
Karimah Lamar
Jean Zelan
Bryan Tollin
Angelito R. Sevilla
Franchesca C. Herrera
Al Sambat
Tiffany Thomas
Kevin Fox
Adam Hellman
Mike Lieberman
William Youmans
Peter Leckman
Timothy Griffiths
Elizabeth Eng
Salomon Zalava
Catherine Meza
Mohammed Kashmiri
Nicole Davaranah
Karen Tamlin
Stephen Lee
Neil Ranu
Regera Rosati
Michael Jones
Alex Zuniga
Rovianne Leigh
Rosetta Shatkin
Paul Chavez
Marcus Cordova

Heather Dennis
Abigail Lloyd
Kaja Tretjak
Rachael Burnson
Amira Day
Lindsay Nako
John Henry Pearce
Michael R. Froehlich
Elizabeth Voigt
Jaime Santos
Catherine D. Reinke
Christina Torres

Denise Ustaziz
Carol Chacon
Marisa Marquez
Debbie Molina
Eran Bermudez
Brian Moskal
Jennifer Troia
Nikki Radford
Christy Wills
Douglas Chermak

University of California at Davis (King Hall)

Qianuoi Fu
Victoria Choy
Stella Lee
Charles Yu
Gina Kwun
Christopher Yamada
Jennifer Yu
Debbie Torrez
Veronica Ramirez
Jennifer Rodriguez
Chistopher Mendez
Sarah Kate Hellbrun
Fernando Aveces
Jaime L. Diemelke
Rachel Oliver
Clara M. Levers
Tamera Wong
Frank Huerta Jr.
Kenadi Lee

Jeff Vize
Emily Fisher
Leena Rege
Sarah Carrillo
Sally Schwettmann
Jacob Rekeyser
Eli Makus
Dana Kim
Taline Gulesserian
Anne Perry
Thomas Brock
Imelda M. Loza
Patrick Wong
Emmanuel Salazar
Molly Harcos
Steve Iverson
Ranene Royer
Anaglia Dandekan
Peter Leung

Ayumi Urabe
Andrea Anapolsky
David Alan Richter
Matthew Cohen
Cerissa Salazar
Parrenas
Adrian Lopez
Komal Chaddha
Francisco Moreno
Joshua Reiter
Carlos Osegueda
Bruce Chang
Anna Gehriger
Juan Cervantes
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Meredith Nikon
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University of California, Hastings College of the Law

Arthur Corona
Karriem Baker
Erika Garcia
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Rabin Nabiradeh
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Matt Sayenor
Adelaida Huerta
Theresa DeLoach
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Elizabeth Pulido
Daniel DeLimon
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A. Robert Rhoan
Kathy S. Yoon
Nazanin Nassir
David Lanas
Reichi Lee
Valerie Tinuma
James Soncuya
Jacqueline Guzman
Paul Sasaki
S. Traneouerhau
Penny Trieu
Linda Jazo
B.R. Marsh
Zi Lin
John Yun
Steve Shin
Humberto Iglesias
Phong La
Natalie Leonard
Mister Phillips
Dominic Mitchell

2. I, and several law school colleagues, also compiled information and obtained testimony from students who are currently enrolled at UCLA School of Law, Boalt Hall, UC Davis King Hall, and UC Hastings College of the Law. I correctly transcribed these testimonies and they are corrected stated in the *amici brief*. These statements have been given in their complete context to our attorney of record for safe keeping. The statements of Annette Almazan, Class of 2002, UCLA School of Law; Art Corona, UC Hastings College of the Law, Class of 2003; Rosa Figueroa-Versage, UC Hastings, Class of 2003; Lena Hines, Class of 2002, UCLA School of Law; Brandon Tran, Class of 2002, UCLA School of Law; Angela Mooney-D'Arcy, UCLA School of Law Class of 2004; Anthony Solana, UCLA School of Law Class of 2004; Marky Keaton, UCLA School of Law Class of 2003; Margaret Richardson, Boalt Hall Class of 2003; Erin K. Pitts, Boalt Hall Class of 2004; Jamaar M. Boyd, Boalt Hall Class of 2003; and Tiffany Renee Thomas, Boalt Hall Class of 2005, as set forth in this brief are true and correct transcriptions.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct and of my personal knowledge.

Executed this 13th day of February 2003, in the City of Los Angeles, County of Los Angeles, California, U.S.A.

ERIKA WOODS